IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CASE NO.: **CWP No.387 of 2007**

DATE OF DECISION: August 30, 2007

BALDEV SINGH AND OTHERS ...PETITIONERS

VERSUS

STATE OF HARYANA AND OTHERS ...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE ASHUTOSH MOHUNTA.
HON'BLE MR. JUSTICE T.P.S. MANN.

PRESENT: MR. GIRISH AGNIHOTRI, SR. ADVOCATE
WITH MR. MOHIT JAGGI, ADVOCATE FOR THE PETITIONERS.
MR. HARISH RATHEE, SR.DAG, HARYANA.

ASHUTOSH MOHUNTA, J.

This judgement shall dispose of Civil Writ Petition No.387 of 2007 and CWP Nos.7163, 11685, 2364, 2433, 2603, 2625, 2668, 2719, 2722, 2723, 3165, 3532, 3636, 3683, 3724, 3782, 3909, 3911, 4353, 4357, 4564, 5259, 5691, 6623, 4374, 4418, 4810, 6880, 7180 of 2007 as common questions of law and facts arise in these cases. The facts are being extracted from CWP No.387 of 2007.

The petitioners have prayed that directions be issued to the respondents to allow them to continue as Guest Faculty Teachers till regular appointments are made by the Government. They have also prayed that directions be also issued not to discontinue the services of the Teachers who have been engaged a Guest Faculty during school vacations and holidays and they be paid their full salary.

The Government of Haryana through the Financial

Commissioner-cum-Principal Secretary to Government of Haryana, Department of Education issued guidelines to engage Teachers as Guest Faculty in order to tide over the shortfall of teaching staff in the Government teaching institutions in the State of Haryana. The aforesaid guidelines had initially appeared in the newspapers on 17.12.2005, and subsequently similar guidelines were issued by the Government of Haryana vide letter dated 29.11.2006. The relevant guidelines/instructions which appeared in the newspaper dated 17.12.2005, are being reproduced hereunder:-

"*CRITERIA, PROCEDURE AND REMUNERATION*

You are directed to follow the following guidelines while making the engagement of teachers as guest faculty:

CRITERIA:

1. *The Principal/Headmaster/DDO (in the case of vacancy of Headmaster and Principal and also in case of Elementary Schools) of the concerned School are authorized to assess the shortfall of Teachers keeping in view the sanctioned posts of teachers and the enrollment of students.*

2. *The minimum prescribed period for Lectures/Masters/C&V Teachers are 30, 38 and 39 respectively for one week. If in any school the post of any subject is vacant or the demand of periods exceeds*

full workload as per the above norms then a Guest Faculty arrangement be made.

3. *That such offers will firstly be made to retired Teachers who had received National/State Awards or who enjoyed an excellent reputation for knowledge in the subject. If such good retired Teachers are not available, then the Head of the Institution will engage other Teachers on Guest Faculty having prescribed qualifications as applicable to regular teachers. For this the powers are delegated to the level of Principal/Headmaster/DDO.*

4. *The applicant should fulfill all the qualifications prescribed for the post as laid down in the Service Rules for direct recruitment. This offer will be made only to those who possess superior qualifications to the minimum prescribed qualifications.*

PROCEDURE:-

I. *The Head of institutions would engage teaches on Guest Faculty on the basis of vacancies and the workload.*

II. *The Principal/Headmaster/DDO after assessing the requirement will display the requirement on a board displayed at the Main Gate of the Institution. In case of schools having post of Principal or Headmaster vacant,*

the DDO/BEO would assess the requirement and will display the same on the board. BEO will also assess the requirement of elementary school teachers.

III. *The application should be submitted by the applicants offering their services for engaging the Guest Faculty for the specific period, from the date of engagement till 31.3.2006 only.*

IV. *The Principal/Headmaster/DDO will process all the applications received. If the Principal/Headmaster/ DDO receives applications more than the vacancies for that academic session, then he/she will give preference to the applicants having higher academic merit. While appointments in the guest faculty, the preference will be given to the candidate of that very village/area. The merit list of such candidates would be prepared. If the candidate of that concerned area is not available then the merit list of candidates of that division will be prepared. IInd preference will be given to the candidates of that division. IIIrd preference will be given to the candidates of that district.*

V. *As and when a regular appointee is posted to that school (whether, after regular direct recruitment or after promotion or after adjustment or after transfer) the*

Head of the Institution will dispense with the services of the persons engaged on Guest Faculty of that category of post. It is not an appointment but job work offer on period basis on prescribed rates. This is with view to take case of studies of students where regular teachers are not available in the school.

REMUNERATION:

The teachers engaged on guest faculty will be paid remuneration/honorarium as the detail below:-

Sr. No.	*Category*	*Honorarium for guest faculty on period basis.*
1.	*Hindi/Sanskrit/Punjabi Teachers*	*Rs.50/- per period.*
2.	*PTI/Drawing Tr./JBT*	*Rs.45/- per period.*
		Rs.225/- per day.
3.	*Master*	*Rs.55/- per day.*
4.	*School Lecturers*	*Rs.80/- per period.*

The payment of the persons engaged on guest faculty will be drawn against the budget of vacant post lying the school.

ii) If the person engaged for the extra load without vacancy payment will be given from remedial coaching budget.

iii) This would be done in concurrence with the Finance Department.

Other guidelines:-

1. No teachers be engaged in following categories:-

i) PTI

ii) DPE

iii) Drawing teacher upto Middle Schoools.

iv) Lect. In Physics, Chemistry, Biology, Math, Commerce & Economics (as there are already surplus Lecturers in these categories.

2. The guest faculty should be engaged on the basis of merit. The pick and choose method should not be adopted. The applications be called from all the eligible candidates upto 20.12.2005. The teachers should be engaged on the basis of requirement as per workload and vacancy.

3. All the terms and conditions including mode of payment should be displayed on the main gate of the institution. Transparency to be followed in this respect. The detail of periods taken by the teachers engaged as guest faculty be maintained in a regular.

4. Such teachers should be engaged on the basis of

agreement for a specific period indicating the periods to be allotted to the teachers.

5. The guest faculty teacher will produce his monthly bill at the end of the month as per terms and conditions laid down in the agreement."

In pursuance of the guidelines issued by the Government of Haryana, the respondents appointed the petitioners as Guest Faculty Teachers.

It is contended that though the aforesaid conditions were applicable upto 31.6.2006, yet similar instructions were also continued for the next session 2006-2007 also. In pursuance of the guidelines issued by the Government, the teaching staff is being appointed, known as guest faculty.

Apprehending that the petitioners would be relieved from service and a new set of Teachers would be appointed by the respondents in their place, the petitioners have filed this writ petition wherein they have prayed that they be allowed to continue in service till regular appointment of Teachers are made by the respondent-State.

Learned counsel has argued that in a case i.e., CWP No.14457 of 1997 titled as *Mohita Goyal* vs. *Kurukshetra University, Kurukshetra & Ors.*, wherein, the State of Haryana appointed teachers on 89 days' contract basis and the Hon'ble High Court quashed that order limiting appointment of teachers for 89 days and declared the same as illegal and unconstitutional and struck it down by declaring the same as ultravires of Article 14, 16 and

39(d) of the Constitution and further gave a direction to allow the petitioners to continue in service till the availability of regularly selected persons.

On the basis of the above, learned counsel has further contended that the State Government is bound to carry on with the *ad hoc*/temporary employees till such time, regular posts are not filled up and further that the State Government cannot terminate the services of the petitioners during examination or vacations period and it will not be in the interest of justice that the Guest Faculty Teachers be employed for a limited period and as and when they are no more required, their services be dispensed with.

Lastly, it is prayed that the petitioners be allowed to continue working till the vacancy are filled up through regularly selected candidates and to grant the petitioners regular pay scales of their posts in the principle of 'Equal Pay for Equal Work' and their services may not be terminated/discontinued during vacations/examinations/admissions.

Mr. Harish Rathee, Sr. DAG, Haryana submits that the petitioners were only recruited as Guest Faculty Teachers to meet out the exigency in various schools/colleges of the State of Haryana. It has been clearly mentioned in their appointment letters that their services are liable to be terminated at any time without any notice and assigning any reason. It has also been mentioned in their appointment letters that if terms and conditions imposed are acceptable to the petitioners then they can join their duties. The petitioners raised no objections at that time and joined the services of their own free will. Learned State counsel further submits that as is clear from the designation 'Guest Faculty Teacher', the petitioners

were only appointed as Guests as such they have no substantive right to be retained/continue in service. Learned State counsel further submits that in the present case the petitioners were engaged by respondent No.3 on contract basis to meet out the requirement of college at the end of the academic session 2006-07. The petitioners have rightly been relieved of their respective duties by respondent No.3 as per the conditions laid down in their appointment letters. Learned State counsel further submits that the only purpose of the State Government to engage Guest Faculty Teachers was to ensure that the studies of the students do not suffer as it was almost an impossible task to recruit teachers on regular basis at that time. Learned State counsel further submits that Education Department is a big Department, therefore, some posts of lecturers are lying vacant due to death, retirement, resignation, promotion etc. It has been further submitted that in order to impart uninterrupted education to the students, the State Government directed all Head of Institutions vide letter dated 19.9.2006, to assess the shortfalls and wherever necessary to engage the lecturers as Guest Faculty on 'period' basis on a fixed remuneration for a specific period i.e., upto 31.3.2007, so that studies of the students is not affected. Learned counsel submits that as the petitioners admittedly were engaged only upto 31.3.2007, therefore, they could not be retained beyond that date as they were only engaged and not appointed/recruited through a proper selection process. Learned counsel further submits that it is also essential to point out that the petitioners have been engaged by the respective Head of the Institutions/Principals concerned who were authorized only to engage Guest Teachers on 'period basis' by the State Government and not to make selection amongst them. Moreover, they were engaged only for teaching

three days a week. Even otherwise, no criteria for selection/interview of the petitioners was framed and moreover, the petitioners were engaged from certain pocket areas only, without competing with the best of the talent available. Learned State counsel has submitted that no Lecturers were ever appointed on 89 days basis in the Higher Education Department. It is also apprehended that in all probabilities the petitioners can also claim regularization if their services are not terminated/discontinued which shall further amount to infringement of Constitutional rights of the persons, especially of those belonging to the reserved categories. It has been further submitted that the petitioners were engaged only for the available teaching workload and not for vacations/ examinations/admissions.

Learned State counsel has relied on the judgement in *Secretary, State of Karnataka & others* vs. *Umadevi & others*, reported as (2006) 4 SCC 1, to contend that the State can engage employees on contract basis by taking into account the requirement of work.

Learned State counsel has further relied on the judgement in CWP No.4973 of 2006 titled as *Rajender Kumar* vs. *State of Haryana and others* decided on 7.8.2006, wherein this Court had dismissed the said writ petition having taken a view that merely because the petitioner has been engaged for two months, does not give him a license to impose himself on the respondents by acquiring a permanent status.

After hearing counsel for the parties, we are of the considered view that the Policy of appointing Teachers as Guest Faculty Teachers was introduced by the State Government so as to provide uninterrupted education to the students. As the Education Department is a huge Department in which posts of Lecturers remain vacant due to death,

retirement, resignation, promotions, etc. of Teachers, therefore, in order to ensure that studies of the students do no suffer hence, the State Government decided to engage Lecturers as Guest Faculty. Accordingly, the Principals were directed to appoint Lecturers on period basis on a fixed remuneration for a fixed period upto 31.3.2007. The petitioners themselves requested that they be engaged for a specified period on a fixed remuneration and hence now they cannot claim that they should be allowed to remain in service till regular appointments are made. A perusal of the Policy shows that appointment of Guest Faculty Teachers was a job work on period basis at prescribed rates and hence, no Guest Faculty Teacher is entitled to remain on the post beyond the period for which he has been engaged. The petitioners were engaged as Guest Faculty Teacher by the Principal of the college concerned, who otherwise, is not the competent authority to make appointment under the Rules.

Apart from the above, the petitioners were engaged from certain pocket areas only i.e., from their village or from the block and they never competed with the best of talent available. The reservation polcy was also not followed. Essentially the petitioners were engaged on contract basis and there was no obligation on either side to continue that contract beyond the period for which the Guest Faculty Teachers/Lecturers were appointed.

It is, thus, clear that the claim of the petitioners for quashing the condition of limiting the period of their appointment does not suffer from any illegality or irregularity which may warrant interference of this Court. In the Constitutional Bench judgement in *Secretary, State of Karnataka & others* vs. *Umadevi & others*, (2006) 4 SCC 1, the Hon'ble Supreme Court

has allowed the State to engage employees on contract basis by taking into account the requirement of work. The petitioners can neither impose themselves upon the respondents nor they can be allowed to continue beyond the period for which they were engaged as Guest Faculty Teachers. The petitioners also cannot be allowed to continue till regular appointments are made, as Guest Faculty Teachers are appointed only to tide over the situations like death, retirement, resignation, promotion, etc.

In view of the above, we find no merit in the writ petition and the same is dismissed.

(ASHUTOSH MOHUNTA)
JUDGE

August 30, 2007
Gulati

(T.P.S. MANN)
JUDGE